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Cates v. Cates: Illinois' "Solution" to Tort Litigation Between Parents and Children

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I. INTRODUCTION

In 1891, the Supreme Court of Mississippi created the doctrine of parent-child tort immunity.[1] Citing no authority,[2] the court held that parents are immune from tort actions brought by their minor, unemancipated children.[3] Following Mississippi's lead, most American courts eventually forbade tort litigation between parents and their children.[4]

An Illinois court recognized parent-child tort immunity only four years after Mississippi.[5] Gradually, the Illinois judiciary strayed from implementing the doctrine in its purest form.[6] As in other jurisdic-

1. Hewellette v. George, 9 So. 885 (Miss. 1891). In its most comprehensive form, the doctrine of parent-child tort immunity bars actions brought by minor, unemancipated children against their parents and actions brought by parents against their minor, unemancipated children. *See* David L. Grobart, *Parent-Child Tort Immunity in Illinois*, 17 LOY. U. CHI. L.J. 303, 303 n.1 (1986). The terms "parental immunity," "parent-child tort immunity," and "parent-child immunity" have been used to describe the general rule created by Mississippi. Throughout this Note, these terms will be used interchangeably.

2. Unlike many rules of law, the doctrine of parent-child immunity is not a descendant of English common law. Grobart, *supra* note 1, at 305. Although there are no decisions stating so, there is no reason to think that English common law would not permit actions for personal torts committed in the context of a parent-child relationship. W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS § 122, at 904 (5th ed. 1984).

English law gave a parent legal custody of a child, but the child retained a separate legal identity. *Id.* For instance, the law entitled children to the benefits of their own property. *Id.* In matters affecting property, the law freely recognized causes of action brought by children against their parents and vice versa. *Id.* Furthermore, in tort, children were responsible for bringing their own causes of action against other parties and, in turn, were held liable for their own torts. *Id.* Thus, English common law would probably have recognized intrafamilial tort actions as well. PROSSER & KEETON, *supra*, § 122, at 904; *see also* William E. McCurdy, *Torts Between Persons in Domestic Relation*, 43 HARV. L. REV. 1030, 1056-63 (1930).

3. *Hewellette*, 9 So. at 887. The *Hewellette* court stated, "But so long as the parent is under obligation to care for, guide, and control, and the child is under reciprocal obligation to aid and comfort and obey, no such action as this can be maintained." *Id.*

4. Grobart, *supra* note 1, at 303. Citing a case from virtually every state, Grobart observed that "parental immunity once enjoyed almost universal acceptance in American courts." *Id.*

5. Foley v. Foley, 61 Ill. App. 577 (1895). According to the court, it was "doubtless the law" that a child could not bring an action alleging parental maltreatment. *Id.* at 580; *see also* Meece v. Holland Furnace Co., 269 Ill. App. 164, 169 (1933).

6. *See infra* notes 50-97 and accompanying text; *see also* Grobart, *supra* note 1, at 313-318 (characterizing Illinois' treatment of parental immunity as a "gradual erosion

tions, Illinois courts have carved out several exceptions to the original rule.[7] For example, Illinois courts have allowed intrafamilial suits when the plaintiffs alleged willful and wanton misconduct.[8] Illinois courts have also disregarded the doctrine in situations where the alleged wrongful conduct fell outside the scope of the family relationship,[9] or where the tortfeasor's death actually dissolved the family relationship.[10] Furthermore, where the alleged tortfeasor owed a duty to the general public, Illinois courts have prohibited the immunity defense.[11] Finally, Illinois courts have permitted derivative third-party actions seeking contribution from negligent parents.[12]

In recent years, the growing number of exceptions to the parental immunity doctrine has perplexed both courts and litigants in Illinois.[13] In *Cates v. Cates*,[14] the Illinois Supreme Court finally addressed this confusion as it tried to create a modern solution to the problems that arise in tort litigation between family members.[15] Without fully abandoning the doctrine, the court proposed a new standard to clarify when parent-child immunity is a viable defense.[16]

This Note first reviews the origin and tradition of parent-child tort immunity.[17] It then discusses the adoption and gradual erosion of parental immunity in Illinois.[18] It also describes three modern approaches followed in jurisdictions that have abrogated immunity in actions between parents and children.[19] The Note then analyzes the Illinois Supreme Court's most recent treatment of parent-child tort

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of the absolute prohibition").

7. *See infra* notes 61-97 and accompanying text.

8. Nudd v. Matsoukas, 131 N.E.2d 525 (Ill. 1956). The *Nudd* exception was the only one of Illinois' exceptions carved out by the Illinois Supreme Court. All of Illinois' other exceptions first appeared in intermediate appellate courts. For a detailed discussion of the *Nudd* decision, see *infra* notes 62-69.

9. Schenk v. Schenk, 241 N.E.2d 12 (Ill. App. Ct. 1968); *see infra* notes 70-77 and accompanying text.

10. Johnson v. Myers, 277 N.E.2d 778 (Ill. App. Ct. 1972); *see infra* notes 83-86 and accompanying text.

11. Cummings v. Jackson, 372 N.E.2d 1127 (Ill. App. Ct. 1978); *see infra* notes 78-82 and accompanying text.

12. Larson v. Buschkamp, 435 N.E.2d 221 (Ill. App. Ct. 1982); *see infra* notes 87-92 and accompanying text.

13. *See* Cates v. Cates, 619 N.E.2d 715, 722-23 (Ill. 1993), *aff'g* 588 N.E.2d 330 (Ill. App. Ct. 1992).

14. 619 N.E.2d 715, 722-23 (Ill. 1993), *aff'g* 588 N.E.2d 330 (Ill. App. Ct. 1992).

15. *Id.* at 728-29.

16. *Id.*

17. *See infra* part II.A.

18. *See infra* part II.B.

19. *See infra* part II.C.

immunity in *Cates v. Cates*.[20] Finally, this Note predicts how the *Cates* decision will impact future tort litigation between parents and children in Illinois.[21]

II. BACKGROUND

A. *The "Great Trilogy": The Origin of Parent-Child Tort Immunity*

The doctrine of parent-child tort immunity had its beginnings in three decisions reached by state high courts near the turn of the century.[22] In *Hewellette v. George*,[23] the Supreme Court of Mississippi initiated a century of controversy over whether the American legal system has a place for tort litigation between immediate family members.[24] In *Hewellette*, Sallie Hewellette, a minor, brought an action against her mother for false imprisonment.[25] Married but separated from her husband, Sallie alleged that her mother wrongfully confined her in an insane asylum for eleven days.[26] At trial, a jury awarded damages to Sallie.[27] The supreme court, however, remanded

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20. *See infra* parts III-IV.

21. *See infra* part V.

22. Hewellette v. George, 9 So. 885 (Miss. 1891); McKelvey v. McKelvey, 77 S.W. 664 (Tenn. 1903); Roller v. Roller, 79 P. 788 (Wash. 1905). These three state court opinions are together known as the "great trilogy" and form the genesis of parent-child tort immunity. Martin J. Rooney & Colleen M. Rooney, *Parental Tort Immunity: Spare the Liability, Spoil the Parent*, 25 NEW. ENG. L. REV. 1161, 1162-63 (1991). According to these authors:

> The "great trilogy" established the theoretical underpinnings for parental tort immunity. The justifications advanced for parental tort immunity were many and varied and included: a) the state's interest in maintaining and preserving family harmony, b) the fear of fraudulent, collusive claims, c) the protection of family finances, d) the protection of parental discretion and authority, and e) the analogy to spousal immunity.

Id. at 1163 (footnotes omitted).

23. 9 So. at 887.

24. *See* Rooney, *supra* note 22, at 1162-66. As the authors stated: "Although adoption of parental tort immunity swept the country, criticism of the doctrine followed shortly thereafter." *Id.* at 1163. Throughout the United States, jurisdictions often disagreed on whether the traditional justifications for parental immunity held up to judicial scrutiny. *Id.* Thus, Mississippi's absolute prohibition of tort actions between parents and children did not last long as a uniform rule throughout the United States. *Id.* Instead, courts began to develop distinctively different approaches to determine whether to permit such litigation. *Id.; see also* Gail D. Hollister, *Parent-Child Immunity: A Doctrine in Search of Justification*, 50 FORDHAM L. REV. 489, 508-11 (1982) (discussing exceptions to the absolute parent-child immunity rule).

25. *Hewellette*, 9 So. at 887.

26. *Id.*

27. *Id.*

the case to determine whether the defendant supported the minor at the time of the false imprisonment.[28]

The supreme court explained that an unemancipated child cannot bring a tort action against her parent.[29] The court reasoned that minor children who depend on their parents for guidance and support have a reciprocal obligation to obey their parents.[30] The court also stated that a sound public policy, designed to protect the best interests of society and families, forbids minor children from seeking compensation for personal injuries allegedly caused by their parents.[31] Furthermore, the court explained that the criminal laws of a state sufficiently protect unemancipated children from intentional parental violence.[32]

Twelve years later, the Supreme Court of Tennessee followed Mississippi's lead by adopting the doctrine of parent-child tort immunity. In *McKelvey v. McKelvey*,[33] a minor child brought an action for civil damages against her father and stepmother.[34] Appealing the trial court's dismissal of her action, the child alleged that her stepmother, with the consent of her father, inflicted cruel and inhumane treatment upon her.[35] The supreme court, however, agreed with the reasoning

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28. *Id.* The *Hewellette* court apparently conditioned the use of the parental immunity defense upon proof that the child was "unemancipated." Emancipation of a minor child "involves an entire surrender of the right to the care, custody, and earnings of such child as well as a renunciation of parental duties." BLACK'S LAW DICTIONARY 521 (6th ed. 1990). Thus, in *Hewellette*, immunity would not have been a viable defense if the plaintiff had been self-sufficient or financially dependent on her estranged husband. *Hewellette*, 9 So. at 887. Furthermore, it appears from *Hewellette* that emancipation which occurs through a process other than reaching a majority age is not necessarily permanent. The *Hewellette* court indicated that a formerly emancipated minor who has again become financially dependent on a parent is considered unemancipated and subject to the parental immunity doctrine. *Id.*

29. *Hewellette*, 9 So. at 887.

30. *Id.*

31. *Id.* The court's exact words were as follows:

> [S]o long as the parent is under obligation to care for, guide, and control, and the child is under reciprocal obligation to aid and comfort and obey, no such action as this can be maintained. The peace of society, and of the families composing society, and a sound public policy, designed to subserve the repose of families and the best interests of society, forbid to the minor child a right to appear in court in the assertion of a claim to civil redress for personal injuries suffered at the hands of the parent.

Id.

32. *Id.* "The state, through its criminal laws, will give the minor child protection from parental violence and wrong-doing, and this is all the child can be heard to demand." *Hewellette*, 9 So. at 887.

33. 77 S.W. 664 (Tenn. 1903).

34. *Id.*

35. *Id.* Although the plaintiff's stepmother inflicted the cruel treatment, the court stated that the father would be the responsible party if he allowed such mistreatment. *Id.*

set forth in *Hewellette*.[36] Convinced that the state's criminal laws provided sufficient protection from family violence, the supreme court affirmed the trial court's dismissal.[37] Furthermore, by drawing an analogy to the policy of spousal immunity,[38] the court reiterated Mississippi's conclusion that actions by children against parents would disrupt family unity and societal peace.[39]

In the final case of the "great trilogy," the Supreme Court of Washington held in *Roller v. Roller*[40] that a minor plaintiff allegedly raped by her father had no right to civil redress.[41] In *Roller*, the defendant father contended that his minor, unemancipated daughter

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Curiously, instead of directly addressing the issue of whether parental immunity protects stepparents, the court proceeded as if the stepmother had acted as an agent for the plaintiff's father. *Id.*

In modern courts, the issue of whether to afford immunity to those standing in *loco parentis* has become a recurrent one. Prosser and Keeton indicate that actions are nearly always permitted against one who is not a parent but who merely stands in place of one, such as a stepparent or another person with custody of the child. PROSSER & KEETON, *supra* note 2, at 905; *see also* Larson v. Independent Sch. Dist., 289 N.W.2d 112 (Minn. 1979) (holding that despite having temporary custody or control of the child, schools do not fall within the doctrine's scope and will be held liable for negligence); Rayburn v. Moore, 241 So. 2d 675 (Miss. 1970) (refusing to afford immunity to a defendant stepfather because there were no reciprocal obligations of support and obedience between the stepfather and the plaintiff stepdaughter). *But see* Mitchell v. Davis, 598 So. 2d 801 (Ala. 1992) (extending the doctrine of parental immunity to foster parents); Foley v. Foley, 61 Ill. App. 577 (1895) (holding that the doctrine applies to those taking the place of a parent).

36. *McKelvey*, 77 S.W. at 664.

37. *Id.*

38. *Id.* at 665. Many courts analogize parental immunity to spousal immunity. *See, e.g.*, Downs v. Poulin, 216 A.2d 29 (Me. 1966); Luster v. Luster, 13 N.E.2d 438 (Mass. 1938). These courts theorize that any litigation between immediate family members would disrupt family harmony. *Downs*, 216 A.2d at 32; *Luster*, 13 N.E.2d at 439-440.

Nevertheless, this analogy seems misplaced in light of the contrasting theories underlying spousal immunity and parental immunity. PROSSER & KEETON, *supra* note 2, at 905. The common law considered the spousal relationship a single entity under the husband's control and management. Grobart, *supra* note 1, at 309. Thus, a wife could not enter into a contract, convey property, or bring a cause of action without the joinder of her husband. *Id.* Furthermore, because each spouse was not an independent legal entity, no actions could be brought by one spouse against the other. *Id; see also* William E. McCurdy, *Personal Injury Torts Between Spouses*, 4 VILL. L. REV. 303, 303-307 (1959) (discussing the rationale behind the common law prohibition of actions by one spouse against another).

Conversely, at common law, parents and children did not share a single legal identity. PROSSER & KEETON, *supra* note 2, at 904. Instead, the law considered children separate legal persons capable of maintaining property and entering into contracts. *Id.* Thus, using spousal immunity as a justification for parent-child tort immunity seems somewhat illogical and problematic.

39. *McKelvey*, 77 S.W. at 664.

40. 79 P. 788 (Wash. 1905).

41. *Id.*

had no right to sue for a tort committed by a parent.[42] In an attempt to refute the public policy justification that such actions would disturb family unity, the plaintiff argued that her father's violent conduct had already disturbed the harmony of the Roller family.[43]

The supreme court rejected this argument, deeming it impossible to abolish the doctrine in some cases and not others.[44] The court explained that the judicial system must rely instead on uniform principles of law, especially those that prevent "disturbing confusion" over when to allow parent-child litigation.[45]

The *Roller* court also offered financial reasons for prohibiting such actions.[46] In the event of a judgment, the court suggested, other minor children in the family would eventually inherit less from a liable parent's estate.[47] Furthermore, the court anticipated the possibility that a parent held liable could retrieve the awarded amount if the child plaintiff died before the parent.[48] Thus, as in Mississippi and Tennessee, the Supreme Court of Washington implemented an absolute rule of parent-child tort immunity.[49]

B. Chipping Away at Mississippi's Rule: Illinois' Treatment of Parent-Child Tort Immunity

An Illinois court recognized the parent-child tort immunity doctrine for the first time in 1895, four years after the Mississippi Supreme

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42. *Id.*

43. *Id.*

44. *Id.* at 798. The court stated:

> There seems to be some reason in this argument, but it overlooks the fact that courts in determining their jurisdiction or want of jurisdiction, rely upon certain uniform principles of law, and, if it be once established that a child has a right to sue a parent for a tort, there is no practical line of demarkation which can be drawn, for the same principle which would allow the action in the case of a heinous crime, like the one involved in this case, would allow an action to be brought for any other tort.

Roller, 79 P. at 788-89.

45. *Id.* at 789.

46. *Id.*

47. *Id.* According to the court:

> [T]he public has an interest in the financial welfare of other minor members of the family, and it would not be the policy of the law to allow the estate, which is to be looked to for the support of all the minor children, to be appropriated by any particular one.

Id.

48. *Roller*, 79 P. at 789. The court predicted, "If a child should recover a judgment from a parent, in the event of [the child's] death the parent would become heir to the very property which had been wrested by the law from him." *Id.*

49. *Id.*

Court's *Hewellette* decision.[50] As in other jurisdictions, Illinois courts have since carved out several exceptions to an absolute bar against tort litigation between parents and children.[51] This Part discusses Illinois' initial adoption of the doctrine[52] and describes five situations in which Illinois courts have disallowed immunity as a defense.[53]

1. *Foley v. Foley*: Parent-Child Tort Immunity Comes to Illinois

In *Foley v. Foley*,[54] a minor brought an action against his uncle for permanent injuries that he sustained while living with the uncle.[55] Following his father's death and his mother's remarriage, the plaintiff resided with the uncle for fourteen years.[56] The plaintiff alleged that during that time, the uncle often beat him and failed to provide medical attention when a horse kicked and broke the boy's arm.[57]

At trial, the court instructed the jury that a child may not maintain a civil action for damages against a parent or one acting as a parent.[58] On review, the Second District of the Illinois Appellate Court agreed with this instruction, stating that a child may not bring an action alleging parental maltreatment, whether the relation is by blood or created by adoption.[59] Accordingly, while the appellate court remanded the case to determine the validity of the plaintiff's adoption, it made clear that in at least one appellate district, some form of immunity was available to Illinois parents.[60]

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50. Foley v. Foley, 61 Ill. App. 577 (1895).

51. *See infra* notes 61-97; *see also* Robert A. Belzer, Comment, *Child v. Parent: Erosion of the Immunity Rule*, 19 HASTINGS L.J. 201, 206-218 (1967).

Belzer explains how most jurisdictions have gradually strayed from applying the parental immunity rule in its purest form. *Id.* Belzer also touches on the following situations in which, as of 1966, some American courts refused to afford immunity: (1) actions alleging willful or malicious torts; (2) actions accruing after the emancipation of the child; (3) actions against persons standing in *loco parentis*; (4) actions arising from a parent's business activity; (5) third-party liability actions; (6) actions commenced after the death of a parent or child; (7) wrongful death actions; and (8) actions covered by liability insurance. *Id.*

52. *See infra* notes 54-60 and accompanying text.

53. *See infra* notes 61-97 and accompanying text.

54. 61 Ill. App. 577 (1895).

55. *Id.* at 578.

56. *Id.*

57. *Id.* at 579.

58. *Id.*

59. *Foley*, 61 Ill. App. at 580. Apparently, the *Foley* court, which introduced parental immunity into Illinois law, believed that one standing in *loco parentis* should also be immune to suits brought by the minor, unemancipated children in their custody. For a more detailed discussion of this issue, see *supra* note 35.

60. *Foley*, 61 Ill. App. at 580.

2. Illinois' Exceptions to Parent-Child Tort Immunity

Illinois courts fell in line with *Foley* and did not modify its absolute prohibition of parent-child tort litigation for approximately sixty years.[61] Then, in 1956, the Illinois Supreme Court recognized the first of five exceptions to parental immunity.

In *Nudd v. Matsoukas*,[62] the supreme court abolished parent-child immunity for tort claims arising from a parent's willful and wanton conduct.[63] Plaintiff William Matsoukas, Jr., a minor, brought an action against his father seeking to recover for injuries he sustained in an automobile accident.[64] The plaintiff alleged that his father acted in a willful and wanton manner by driving too fast for conditions on a wet, foggy night.[65] Characterizing the question as a novel one in Illinois, the court held that the public policy reasons behind the doctrine of parent-child immunity did not justify barring a suit based on willful and wanton misconduct.[66] Therefore, the court ruled the complaint

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61. In 1933, the Third District of the Illinois Appellate Court echoed the doctrine recognized in *Foley*. Meece v. Holland Furnace Co., 269 Ill. App. 164 (1933). The *Meece* court asserted, "It is a rule of common law based upon public policy that a minor child cannot sue his father in tort unless a right of action is authorized by statute." *Id.* at 169; *see also* Grobart, *supra* note 1, at 313. Grobart stated:

> Illinois was among the first states to recognize the doctrine that an unemancipated minor child cannot maintain an action against a parent for damages resulting from maltreatment. This absolute prohibition against parent-child tort litigation remained the law in Illinois until 1956, when the gradual erosion of parental immunity began.

Id.

62. 131 N.E.2d 525 (Ill. 1956).

63. *Id.* at 531. As it created an exception to the doctrine of parent-child immunity, the *Nudd* court acknowledged that "[t]he logic of the *Hewellette* decision has been convincingly attacked" and that "the authorities are in hopeless conflict." *Id.* at 530.

64. *Id.* at 526.

65. *Id.*

66. *Nudd*, 131 N.E.2d at 531. The court stated:

> Any justification for the rule of parental immunity can be found only in a reluctance to create litigation and strife between members of the family unit. While this policy might be such justification to prevent suits for mere negligence within the scope of the parental relationship we do not conceive that public policy should prevent a minor from obtaining redress for willful and wanton misconduct on the part of a parent.

Id.

Willful and wanton misconduct is defined as: "Conduct which is committed with an intentional or reckless disregard for the safety of others or with an intentional disregard of a duty necessary to the safety of another's property." BLACK'S LAW DICTIONARY 1600 (6th ed. 1990); *see also* Thomas v. Chicago Bd. of Educ., 395 N.E.2d 538, 541 (Ill. 1979) (requiring willful and wanton conduct in the course of supervisory authority in order to impose tort liability on teachers and coaches); Tanari v. School Directors, 373 N.E.2d 5, 8 (Ill. 1977) (requiring proof of willful and wanton misconduct by an educator, as guardian of students, in order to impose liability for injury to a student); Kobylanski

stated an actionable claim.[67] According to the court, tolerating reckless conduct like that of the *Nudd* father would not foster family unity.[68] Furthermore, dismissing the plaintiff's action would deny him just compensation without fostering any compensating societal benefit.[69]

In *Schenk v. Schenk*,[70] an Illinois Appellate Court also found occasion to disregard the doctrine of parent-child tort immunity.[71] Unlike most cases invoking the doctrine, in *Schenk*, a parent was the plaintiff. Theodore Schenk sued his unemancipated daughter for injuries that he sustained when she negligently struck him with an automobile.[72] To counter his daughter's immunity defense, the plaintiff argued that the daughter's alleged negligence fell outside the scope of any family purpose.[73] The court accepted this argument and concluded that neither party had acted in furtherance of duties owed to each other as father and daughter.[74] Accordingly, since the relationship between the parties would have been the sole reason for dismissing the plaintiff's complaint, the court refused to apply the doctrine of parent-child tort immunity.[75] Instead, the court remanded with instructions that liability could arise from actions constituting a breach of duty outside the family relationship.[76]

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v. Chicago Bd. of Educ., 347 N.E.2d 705, 710 (Ill. 1976) (refusing to waive tort immunity in absence of proof of willful and wanton misconduct).

67. *Nudd*, 131 N.E.2d at 531.

68. *Id.*

69. *Id.* The court's exact words were: "To tolerate such misconduct and deprive a child of relief will not foster family unity but will deprive a person of redress, without any corresponding social benefit, for an injury long recognized at common law." *Id.*

70. 241 N.E.2d 12 (Ill. App. Ct. 1968).

71. *Id.* at 15.

72. *Id.* at 12. *Schenk* is one of the more unusual cases in which a parent sues his unemancipated child. In its most comprehensive form, however, the doctrine of parent-child immunity protects children from actions by their parents and parents from actions by their children. *See supra* note 1.

73. *Schenk*, 241 N.E.2d at 13.

74. *Id.* at 15.

75. *Id.* In Illinois Nat'l Bank and Trust Co. v. Turner, 403 N.E.2d 1256 (Ill. App. Ct. 1980), the court considered the family purpose exception advanced by the plaintiff in *Schenk* and held that a plaintiff invoking this exception must allege facts in the complaint which indicate that the defendant's actions fall outside the family purpose. *Id.* at 1259. The *Turner* court gave the following rationale:

> We believe it is the duty of the plaintiff to include in the complaint an affirmative allegation supported by specific facts that the injury arose as the result of negligence in connection with an activity outside the family relationship. Failure to make such an allegation will render the complaint insufficient at law and subject to a motion to dismiss on the basis of the parental tort immunity rule.

Id.

76. *Schenk*, 241 N.E.2d at 15.

The *Schenk* court touched on a third situation in which the family relationship does not warrant a grant of immunity.[77] Illinois courts will not apply the parental immunity doctrine when the defendant in an intrafamilial suit breaches a duty owed to the general public. For example, in *Cummings v. Jackson,*[78] the plaintiff's mother violated a city ordinance by failing to trim the trees outside her home.[79] Plaintiff Laura Cummings, a minor, alleged that the untrimmed trees obstructed the view of a driver who struck and injured her.[80] As in *Schenk*, the *Cummings* court reasoned that the family relationship did not give rise to the duty owed by the defendant.[81] The court thus refused to extend parental immunity to the defendant, because by violating the city ordinance, the defendant breached a duty that she owed to the general public.[82]

A fourth exception to parent-child tort immunity arises if the tortfeasor's death dissolves the family relationship. For example, in *Johnson v. Myers,*[83] the minor plaintiffs alleged that their father, who had since died, negligently injured them as they rode as passengers in his car.[84] The plaintiffs argued that the death of their father had severed the family relationship protected by tort immunity.[85] Accepting this argument, the court refused to accept the traditional premise of preserving family harmony as a basis for extending immunity to the estate of the deceased father.[86]

Finally, *Larson v. Buschkamp*[87] illustrates the fifth exception to the doctrine of parent-child immunity recognized in Illinois. In *Larson*, the Illinois Appellate Court allowed a defendant to file a contribution

77. *Id.* at 12. The court stated, "The duty breached by the defendant in the operation of the automobile was the same duty owed by her to all pedestrians lawfully using the public street." *Id.* at 12-13.

78. 372 N.E.2d 1127 (Ill. App. Ct. 1978).

79. *Id.* at 1128.

80. *Id.*

81. *Id.*

82. *Id.*

83. 277 N.E.2d 778 (Ill. App. Ct. 1972).

84. *Id.* at 778.

85. *Id.*

86. *Id.* at 779. *But see* Marsh v. McNeill, 483 N.E.2d 595 (Ill. App. Ct. 1985). In *Marsh*, the court held that a minor defendant in an automobile negligence case was immune from a cause of action brought by her injured sister and the executor of her parents' estate. *Id.* at 600. The court distinguished *Johnson* by explaining that in *Marsh*, one of the plaintiffs and the defendant were still alive. *Id.* at 599. The court reasoned that a lawsuit brought by a living sibling and the executor of her parents' estate could still disrupt family harmony. *Id.* Therefore, despite the *Johnson* exception, the parent-child immunity doctrine protected the child defendant in *Marsh*. *Id.* at 600.

87. 435 N.E.2d 221 (Ill. App. Ct. 1982).

action against an injured child's parents.[88] The *Larson* court determined that neither the doctrine of parent-child tort immunity nor the Illinois contribution statute[89] provides a substantive bar to third parties seeking contribution from a negligent parent.[90] The court concluded that such an action poses no danger to the relationship between an injured child and a contributing parent.[91] The court further reasoned that allowing contribution in this context is consistent with the policy of apportioning damages among all liable parties.[92] Finding no compelling public policy reasons to prohibit contribution against a parent who injures a child, the *Larson* court formulated yet another exception to Illinois' parental immunity doctrine.

In sum, Illinois courts have carved out five exceptions to parent-child tort immunity. Parental immunity has failed as a defense in the following intrafamilial lawsuits: (1) actions arising from willful and wanton conduct;[93] (2) actions involving conduct by the tortfeasor that is outside the family purpose;[94] (3) actions alleging the breach of a duty owed to the general public;[95] (4) actions where death has dissolved the family relationship;[96] and (5) third-party contribution actions against a negligent parent.[97]

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88. *Id.* at 226. Several other courts have followed the *Larson* court's lead in allowing third-party contribution actions against negligent parents under Illinois law. *See* Aimone v. Walgreens Co., 601 F. Supp. 507 (N.D. Ill. 1985); Hartigan v. Beery, 470 N.E.2d 571 (Ill. App. Ct. 1984); Moon v. Thompson, 469 N.E.2d 365 (Ill. App. Ct. 1984).

89. ILL. COMP. STAT. ch. 740, § 100/2 (West 1992) (formerly ILL. REV. STAT. ch. 70, ¶ 302(a) (1979)). This statute states in pertinent part:

> Except as otherwise provided in this Act, where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, there is a right of contribution among them, even though judgment has not been entered against any or all of them.

Id. § 100/2(a).

90. *Larson*, 435 N.E.2d at 224.

91. *Id.* at 225.

92. *Id.*

93. Nudd v. Matsoukas, 131 N.E.2d 525 (Ill. 1956); *see supra* notes 62-69 and accompanying text.

94. Schenk v. Schenk, 241 N.E.2d 12 (Ill. App. Ct. 1968); *see supra* notes 70-77 and accompanying text.

95. Cummings v. Jackson, 372 N.E.2d 1127 (Ill. App. Ct. 1978); *see supra* notes 78-82 and accompanying text.

96. Johnson v. Myers, 277 N.E.2d 778 (Ill. App. Ct. 1972); *see supra* notes 83-86 and accompanying text.

97. Larson v. Buschkamp, 435 N.E.2d 221 (Ill. App. Ct. 1982); *see supra* notes 87-92 and accompanying text.

C. *The Latest Trilogy: Three Modern Approaches To Litigation Between Parents and Children*

Most jurisdictions have attempted to establish fair and predictable standards for the use of the parent-child immunity doctrine.[98] While Illinois has carved out specific exceptions to the doctrine, other states have sought more flexible standards to apply in all tort actions between parents and children. This Part outlines the standards developed in Wisconsin, California, and New York, three jurisdictions that have taken groundbreaking steps in modern parent-child tort litigation.[99]

1. Wisconsin's Approach: Where Exceptions Become the Rule

In 1963, the Supreme Court of Wisconsin abolished the absolute rule of parent-child tort immunity in *Goller v. White*.[100] Daniel Goller, a minor, alleged that he suffered severe injury to his right leg as a result of his foster parent's negligent operation of a farm tractor.[101] The defendant argued that he was entitled to parent-child tort immunity because he stood in *loco parentis* to the plaintiff.[102]

Although the trial court agreed with this argument,[103] the supreme court's reasoning led to a substantially different conclusion.[104] The supreme court observed that since the emergence of parent-child tort immunity, jurisdictions throughout the country had established several exceptions to the doctrine.[105] The court also noted that family harmony is often already disturbed before a child plaintiff even files a suit.[106] Moreover, the court reasoned that the presence of liability insurance often lessens any disruption of family harmony caused by suits between parents and children.[107] Therefore, the Supreme Court of Wisconsin decided to set aside parent-child immunity except in two

98. *See* Belzer, *supra* note 51, at 61-92.

99. *See infra* notes 100-136 and accompanying text.

100. 122 N.W.2d 193 (Wis. 1963).

101. *Id.* at 193-94.

102. *Id.* at 194.

103. *See id.* at 196.

104. *Goller*, 122 N.W.2d at 198. In *Goller*, the Wisconsin Supreme Court could have merely refused to afford immunity to one standing in *loco parentis*. Instead, the supreme court took the opportunity to abrogate virtually the entire doctrine. *Id.*

105. *Id.* at 197. According to the *Goller* court: "The courts' hostility to the parental-immunity rule in negligence cases is shown by the exceptions which have been carved out of it." *Id.*

106. *Id.* This is the same argument that was rejected by the Supreme Court of Washington years before in Roller v. Roller, 79 P. 788, 788-89 (Wash. 1905); *see supra* notes 40-49 and accompanying text.

107. *Goller*, 122 N.W.2d at 197.

situations.[108] The court held that it would recognize tort litigation between parents and children except "(1) where the alleged negligent act involves an exercise of parental authority over the child; and (2) where the alleged negligent act involves an exercise of ordinary parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care."[109] Accordingly, the court reversed and remanded, directing Wisconsin courts to apply this standard in intrafamilial tort litigation.[110]

2. California's Approach: The Reasonable Parent Standard

Eight years after *Goller*, the Supreme Court of California also refused to recognize absolute parental immunity. In *Gibson v. Gibson*,[111] California's highest court traced the origin, development, and modification of parent-child tort immunity in America.[112] As had the Wisconsin court, the California Supreme Court concluded that the reasons for implementing parental immunity failed to justify its retention.[113] The court explained that uncompensated injuries may cause as much family strife as an attempt to seek compensation.[114] The court also anticipated no more danger of collusion in suits between parents and minor children than it did in actions between husbands and wives, brothers and sisters, and adult children and parents, all of which California courts permitted at the time.[115]

Although the California Supreme Court agreed with most of the

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108. *Id.* at 198.

109. *Id.*

110. *Goller*, 122 N.W.2d at 198. Applying its new standard, the court held that the plaintiff's complaint stated a cause of action and remanded with directions for the trial court to determine whether the conduct alleged in the complaint fell within the two exceptions where Wisconsin would now afford immunity. *Id.*

111. 479 P.2d 648 (Cal. 1971). In *Gibson*, the California Supreme Court re-examined its holding in Trudell v. Leatherby, 300 P. 7 (Cal. 1931), in which it had held that an unemancipated, minor child could not bring a negligence action against a parent. *Id.*

112. *Gibson*, 479 P.2d at 649-52.

113. *Id.* at 648. The *Gibson* court expressed strong disdain for the immunity rule and its justifications. Alluding to the preservation of family harmony, the court stated, "If this rationale ever had any validity, it has none today." *Id.* The court further reasoned that "parental immunity has become a legal anachronism, riddled with exceptions and seriously undermined by recent decisions of this court. Lacking the support of authority and reason, the rule must fall." *Id.*

114. *Gibson*, 479 P.2d at 651. Like the Wisconsin court, the California court also took into account the effect liability insurance may have on minimizing "family strife." *Id.* The court observed that intrafamilial suits are normally brought only where there is insurance, in which case there are no threats to family harmony. *Id.* at 653 (quoting Fleming James, Jr., *Accident Liability Reconsidered: The Impact of Liability Insurance*, 57 YALE L.J. 549, 553 (1948)).

115. *Id.* at 651-52.

Goller court's reasons for abrogating the doctrine, the California court developed a different approach towards recognizing parent-child suits. The *Gibson* court suggested that like absolute immunity itself, the Wisconsin rule might go too far in protecting parents who treat their children negligently.[116] The court predicted that a parent who successfully brought her conduct within the broad exceptions of *Goller* could justify acting "negligently with impunity."[117] The *Gibson* court also believed that the Wisconsin test would require courts to draw arbitrary distinctions regarding the scope of parental authority and discretion in order to determine whether immunity should be afforded to a particular defendant.[118]

Accordingly, the *Gibson* court sought a test that would ensure that parents did not abuse the authority they have over their children.[119] The court explained that the proper question to ask in parent-child litigation is: "[W]hat would an ordinarily reasonable and prudent *parent* have done in similar circumstances?"[120] Therefore, the *Gibson* court effectively abolished the doctrine of parent-child tort immunity in California by adopting an objective "reasonable parent" standard in litigation between minor children and their parents.[121]

3. New York's Approach: No Action for Negligent Supervision

In 1974, the New York Court of Appeals also reevaluated its approach towards actions between parents and children in *Holodook v. Spencer*.[122] In a consolidation of three cases, the *Holodook* court

116. *Id.* at 652-53. Referring to Wisconsin's approach, the court stated: "[W]e reject the implication of *Goller* that within certain aspects of the parent-child relationship, the parent has carte blanche to act negligently toward his child." *Id.* at 652-53.

117. *Gibson*, 479 P.2d at 653.

118. *Id.*

119. *Id.* at 653.

120. *Id.* In light of this new standard, the court ruled that the plaintiff's complaint stated a cause of action. *Id.* at 654. Thus, upon remand, a jury would have to determine whether instructing a minor to exit a car onto a busy roadway constitutes action of a reasonable parent.

121. *Id.* at 653. The *Gibson* decision has received both praise and criticism by those analyzing the "reasonable parent" standard. *See* Carolyn L. Andrews, Comment, *Parent-Child Torts in Texas and the Reasonable Prudent Parent Standard*, 40 BAYLOR L. REV. 113, 125 (1988) (arguing that the *Gibson* standard "properly leaves to the jury the task of distinguishing between the reasonable exercise of parental discretion and an unreasonable disregard of parental duty"); *see also* Grobart, *supra* note 1, at 327 (urging the state of Illinois to adopt a reasonable parent standard). *But see* Rooney, *supra* note 22, at 1174-75 (calling the *Gibson* court's solution a "false standard" because applying a "reasonable parent" standard is no different from applying a "reasonable person" standard).

122. 324 N.E.2d 338 (N.Y. 1974).

inquired whether it should hold parents liable for failing to supervise their children adequately.[123] The court sought to resolve this question by determining the scope of *Gelbman v. Gelbman*,[124] New York's most significant decision on parent-child tort immunity.[125]

In *Gelbman*, the court of appeals had previously held that it would recognize an action between a parent and child where, absent a family relationship, the court would otherwise recognize a negligence action.[126] In other words, the *Holodook* court reasoned that *Gelbman* did not create any new intrafamilial duties or liabilities.[127] The *Holodook* court interpreted *Gelbman* as merely abolishing a defense that had previously prevented recovery for nonwillful torts between family members.[128]

The *Holodook* court effectively narrowed the potentially broad impact of *Gelbman*, ultimately refusing to hold that the abolishment of parental immunity in *Gelbman* opened the door to a new tort action for negligent supervision.[129] First, the court drew a distinction between duties ordinarily owed absent any family relationship and duties owed as part of a family relationship.[130] The court explained that where an ordinary duty is breached, sanctions will not be withheld merely because of a parent-child relationship.[131] According to the *Holodook* court, this follows directly from *Gelbman*.[132] However, where a case

123. *Id.* at 339. The *Holodook* court consolidated *Graney v. Graney*, *Ryan v. Fahey*, and *Holodook v. Spencer*. *Id.* at 340-41. In *Graney*, an infant plaintiff brought an action for negligent supervision against his father for injuries sustained after falling from a playground slide. *Id.* at 340. In *Ryan*, a three-year-old plaintiff who had been run over by a lawn mower operated by another child brought an action against his mother for negligent supervision. *Id.* at 340-41. Finally, in the third case before the court, the *Holodook* infant brought an action against the driver of an automobile that struck the plaintiff. *Holodook*, 324 N.E.2d at 341. The defendant then filed a third-party contribution action against the plaintiff's mother for negligent supervision. *Id.* From these three cases, the *Holodook* court extracted the common issue of whether New York recognizes an actionable tort for negligent parental supervision. *Id.* at 340.

124. 245 N.E.2d 192 (N.Y. 1969).

125. *Holodook*, 324 N.E.2d at 340.

126. *Gelbman*, 245 N.E.2d at 194.

127. *Holodook*, 324 N.E.2d at 340 (discussing *Gelbman*, 245 N.E.2d 192).

128. *Id* at 342. The *Holodook* court observed that "[i]n abolishing the immunity defense, *Gelbman* allows suits between parents and children which would previously have been actionable between the parties *absent* the family relationship." *Id.*

129. *Id.* at 346.

130. *Id.*

131. *Id.* In the court's words: "Of course, where the duty is ordinarily owed, apart from the family relation, the law will not withhold its sanctions merely because the parties are parent and child." *Id.* Thus, New York law would recognize a cause of action against a parent who negligently injured his child in an automobile accident.

132. *Holodook*, 324 N.E.2d at 346 (interpreting *Gelbman*, 245 N.E.2d 192).

involves a parent's duty to protect his child from injury—a duty that arises from and goes to the "very heart" of the family relationship—"*Gelbman* did not pave the way for the law's superintendence of this duty."[133] Thus, because it involves alleging the breach of a parent's duty to protect his child, the *Holodook* court refused to recognize a cause of action for negligent supervision.[134]

In sum, New York generally allows negligence actions brought by minor children against their parents. Nevertheless, like the high courts of Wisconsin and California, the New York Court of Appeals wanted to avoid infringing upon parental authority and discretion in supervising children.[135] Thus, while it reiterated the *Gelbman* holding that parental immunity fails as a defense when a duty is owed apart from the family relationship, the *Holodook* court also ruled that a minor plaintiff cannot maintain an action for negligent supervision against his own parents.[136]

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133. *Id.*

134. Furthermore, a counterclaim or third-party crossclaim against a contributorily negligent parent would fail because, under *Holodook*, parents are absolved from liability for failing to adequately supervise their own children. *Id.* As a result, a contributorily negligent third-party would have to compensate fully for the injuries of a child. *Id.* at 348 (Jasen, J., dissenting).

135. *Id.* at 346. In expressing its concern with infringing upon parental authority and discretion, the *Holodook* court criticized the "reasonable parent" standard used by California. According to *Holodook*, California's approach tends to "circumscribe the wide range of discretion a parent ought to have in permitting his child to undertake responsibility and gain independence." *Id.*

136. *Id.* Curiously, while parents in New York cannot be held liable for injuries sustained by their own child, they may be held liable for any injuries their child inflicts on a third-party while under the parent's careless supervision. *Id.* at 343. According to the *Holodook* court, New York precedent supports this result. The court explained:

> The law has in the past interjected itself into the family relation to the limited extent of assuring support and guidance personally to the child and of providing a remedy in limited circumstances to third persons who are injured by a negligently supervised child. Beyond this, in New York the law has not ventured into the realm of duties owed by parents to their own children.

Id. at 343.

The court also found support for this position in a review of legislative action in this area. While admitting that New York's legislature had intervened in family relationships only to a limited degree, the court stated:

> When we consult the body of statutory law regarding parents' specified duties to their children, we do not find a premise which leads us, by analogy or reasonable inference, to a conclusion that the legislative judgment on this subject would favor recognition of child's suit against his parent for negligent supervision.

Id. at 345.

Finally, the court justified its ruling by considering the potential for abusing a negligent supervision claim. For example, the court predicted that such actions would be "brought in retaliatory contexts between estranged parents, one suing the other on the

III. DISCUSSION

The highest courts in Wisconsin, California, and New York have each taken substantially different routes in limiting or abolishing the rule of absolute parent-child tort immunity. In *Cates v. Cates*,[137] the Supreme Court of Illinois took its turn at reevaluating the doctrine of parent-child tort immunity.[138] In response to growing confusion over when to apply parent-child tort immunity or when to invoke one of its exceptions, the Illinois Supreme Court granted leave to appeal in *Cates*.[139]

A. Cates v. Cates: *The Facts and Lower Court Opinions.*

On June 9, 1985, four-year-old Heather Cates rode as a passenger in an automobile owned and operated by her father, Timothy Cates, who was exercising his visitation privileges as Heather's noncustodial parent.[140] As Timothy's car approached an intersection of two state highways, it collided with another automobile.[141] The driver of the other vehicle died in the collision, and Heather sustained serious injuries.[142]

Heather sought compensation for her injuries by filing a negligence action through her mother and next friend, Nancy Cates Schmittling.[143] Named as defendants were Timothy Cates, the other driver's estate, and a company that had been performing road construction near the crash site.[144]

Timothy moved for summary judgment, claiming that parent-child tort immunity barred Heather's claim and any derivative actions against

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child's behalf, or by children estranged by their parents who could sue after reaching majority." *Id.*

New York's approach has not escaped criticism. According to one author: "The failure to recognize a parental duty to supervise is unjustifiable. It is paradoxical to hold that other relationships involve a duty to properly supervise a child, but that a parent does not owe such a duty to his own child." Grobart, *supra* note 1, at 320 (footnotes omitted).

137. 619 N.E.2d 715 (Ill. 1993).

138. In 1988, the Supreme Court of Illinois almost decided the same issue it faced in *Cates*, in Stallman v. Youngquist, 531 N.E.2d 355 (Ill. 1988). *Stallman* came before both the circuit court and the appellate court twice before reaching the supreme court. By deciding the case on other grounds, however, the supreme court never reached the parent-child immunity issue.

139. 602 N.E.2d 448 (Ill. 1992).

140. *Cates*, 619 N.E.2d at 716.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

him.[145] The trial court granted Timothy summary judgment on both Heather's claim and on a claim for subrogation filed by her mother's insurer.[146] The trial court questioned whether granting immunity under these circumstances was consistent with the doctrine's purpose.[147] Nevertheless, the court felt compelled by precedent to rule for Timothy.[148]

The appellate court refused to affirm the trial court's grant of summary judgment based on parental immunity.[149] In so doing, the appellate court recommended the abolishment of parent-child tort immunity in Illinois.[150] Nevertheless, the court refrained from taking that drastic measure.[151] Instead, it developed a rule more specifically related to the facts in *Cates*.[152] In what essentially became a sixth exception to parental immunity in Illinois, the appellate court abandoned the doctrine for automobile negligence actions between parents and their children.[153]

B. The Supreme Court's Majority Opinion

The supreme court granted leave to appeal in *Cates*[154] to determine

145. *Cates*, 619 N.E.2d at 716.

146. *Id.*

147. *Id.* The supreme court quoted the trial court as stating: "[I]t is difficult . . . to determine that the purpose of the parental immunity doctrine would be served by applying it to the facts of this case." *Id.*

148. *Id.*

149. *Cates*, 588 N.E.2d 330, 335 (Ill. App. Ct. 1992).

150. *Id.* The court stated: "Having examined the doctrine of parental immunity's history, its rationale and its treatment by our supreme court and the courts in other jurisdictions, we believe it should be abolished." *Id.*

151. *Id.* The court explained:

> We . . . are acutely aware that it is the supreme court, not us, who is the ultimate policy arm of the judicial branch and who bears the responsibility of unifying the law throughout this State. Since we cannot predict with certainty all sets of facts that are possible within the field of parental immunity, we cannot predict the impact of a rule of universal applicability.

Id. at 335.

152. *Id.*

153. *Id.* The appellate court ultimately held that "a parent is not immune from suit brought by a child alleging personal injury proximately caused by that parent's negligent operation of an automobile." *Id.*

This approach has been adopted by several other jurisdictions. *See, e.g.*, Unah v. Martin, 676 P.2d 1366 (Okla. 1984); Ard v. Ard, 414 So. 2d 1066 (Fla. 1982); Williams v. Williams, 369 A.2d 669 (Del. 1976); Lee v. Comer, 224 S.E.2d 721 (W. Va. 1976); Smith v. Kauffman, 183 S.E.2d 190 (Va. 1971). The main justification for this exception is that most defendants will be covered by insurance policies. *See Cates*, 588 N.E.2d at 335. For a discussion of eliminating immunity in automobile accident cases, see Grobart, *supra* note 1, at 322-23.

154. 602 N.E.2d 448 (1992).

whether the appellate court properly reversed the summary judgment for the defendant.[155] The *Cates* court acknowledged that the parties had raised two issues: (1) whether the supreme court had ever adopted parent-child tort immunity; and (2) whether that doctrine barred Heather's action against her father, Timothy, for negligent operation of an automobile.[156]

The supreme court addressed the first issue by evaluating the precedential effect of previous cases that refer to the parent-child immunity doctrine.[157] The court observed that although an Illinois appellate court had acknowledged parental immunity in 1895,[158] the supreme court did not modify the doctrine until sixty-one years later in *Nudd*.[159] The parties in *Cates* cited *Nudd* for very different propositions.[160] Timothy argued that in *Nudd*, the supreme court had recognized the doctrine of parental immunity in matters of mere negligence.[161] On the other hand, Heather argued that *Nudd* had no such effect on Illinois law.[162]

The *Cates* court concluded that *Nudd* acknowledged the doctrine of parent-child tort immunity in negligence actions.[163] Further, the court noted that no supreme court decision explicitly held that the doctrine bars all negligence actions between parents and children; yet the court viewed the references to the doctrine in *Nudd* and other cases as recognizing parent-child immunity in Illinois law.[164]

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155. *Cates*, 619 N.E.2d at 716. Writing for the majority, Justice Freeman first laid out the standard of review for the court. *Id.* No genuine issue as to any material fact existed in *Cates*. *Id.* Therefore, the court's sole function was to determine whether judgment for the defendant was proper as a matter of law. *Id.*

156. *Id.* at 716.

157. *Cates*, 619 N.E.2d at 718-20.

158. Foley v. Foley, 61 Ill. App. 577, 580 (1895).

159. *See supra* notes 62-69 and accompanying text. The *Cates* court observed that after *Nudd*, the doctrine of parent-child immunity did not bar a child's suit for willful and wanton conduct. *Cates*, 619 N.E.2d at 718.

160. *Cates*, 619 N.E.2d at 718.

161. *Id.* at 717-18.

162. *Id.* Heather Cates argued that the holding in *Nudd* applied only to actions involving intentional torts. According to the plaintiff, "*Nudd* did not hold that the parent-child tort immunity doctrine barred negligence actions because the court did not decide that issue." *Id.* at 718.

163. *Id.* at 719.

164. *Id.* at 719-720. The court stated:

> Although *Nudd* decided the question of parent-child tort immunity in the area of intentional torts, judicial *dictum* recognized the doctrine's existence in the area of negligence and that recognition carried the full force of a judicial determination. The recognition of parent-child tort immunity doctrine is further apparent by its reference in subsequent decisions of this court. Through frequent repetition and approval, the rule has become established.

This brought the *Cates* court to its second issue: whether the doctrine of parent-child tort immunity barred Heather's action based on her father's alleged negligence.[165] Even though the court's inquiry focused upon cases involving negligence in automobile accidents, the court acknowledged that the law has made no fundamental distinction between automobile and other negligence actions.[166] Therefore, the court anticipated that its decision in *Cates* would affect the entire area of parent-child negligence.[167]

Mindful of this, the court reevaluated the utility of retaining parent-child tort immunity in Illinois. First, the court traced the origin, development, and modification of parental immunity in America.[168] The court also reviewed the traditional public policy reasons for the doctrine[169] and discussed the approaches taken in many jurisdictions that have fully abrogated parental immunity.[170] The court then narrowed its discussion to Illinois law and the five exceptions to

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Id. at 719 (citations omitted).

The *Cates* court cited other cases that discussed the doctrine of parent-child immunity: Cockrum v. Baumgartner, 447 N.E.2d 385, 390 (Ill. 1983) (citing *Thomas* and recognizing the rule prohibiting suits by children against parents for negligence), *cert. denied*, Raja v. Michael Reese Hospital, 464 U.S. 846 (1983); Thomas v. Chicago Bd. of Educ., 395 N.E.2d 538, 541 (Ill. 1979) (citing *Mroczynski* and *Nudd* for the rule that children may not maintain negligence actions against parents); Gerrity v. Beatty, 373 N.E.2d 1323, 1324 (Ill. 1978) (relying on *Nudd*, *Mroczynski*, and *Kobylanski*, the court stated that Illinois generally does not allow children to sue their parents for mere negligence); Tanari v. School Directors, 373 N.E.2d 5, 9 (Ill. 1977) (citing *Nudd*, the court stated that "a parent is not liable for injuries to his child absent willful and wanton misconduct"); Kobylanski v. Chicago Bd. of Educ., 347 N.E.2d 705 (Ill. 1976) (relying on *Nudd* and *Mroczynski* to hold that the parental immunity doctrine extended to teachers standing in *loco parentis*); Mroczynski v. McGrath, 216 N.E.2d 137, 139 (Ill. 1966) (stating that the *Nudd* court had reviewed parental immunity).

165. *Cates*, 619 N.E.2d at 720.

166. *Id.*

167. *Id.* ("Although the facts of this appeal concern automobile negligence and plaintiff characterizes the issue as whether the immunity applies to automobile negligence cases, we understand that the entire area of parent-child negligence is necessarily implicated.").

168. *Id.* at 721-22.

169. *Id.* at 721. According to the *Cates* court, public policy reasons justifying parental immunity include the preserving of family harmony and parental authority as well as preventing the depletion of parental estates to the detriment of other children. *Cates*, 619 N.E.2d at 721.

170. *Cates*, 619 N.E.2d at 722. The court explained that most jurisdictions have either fully abrogated the doctrine of parent-child tort immunity or have partially abrogated the doctrine by carving out exceptions to the general rule of parental immunity. *Id.*

The court also engaged in a brief discussion of the approaches taken in Wisconsin, California, and New York. *Id.* For a review of the standards used in these jurisdictions, see *supra* notes 100-136 and accompanying text.

immunity previously recognized by Illinois courts.[171]

Of the five exceptions, the *Cates* court focused primarily on the family purpose exception.[172] The court explained that this exception has caused some confusion in automobile negligence cases.[173] The court observed that while some appellate cases interpreted *Schenk*—the seminal case on the family purpose exception—as holding that the act of driving in an automobile falls outside any family purpose, many other courts had based their decisions on the existence of a family purpose on the family's reasons for driving the car.[174] In those cases, the court noted, the availability of immunity depended mainly on the destination of the vehicle and other factual considerations unique to each case.[175] While this confusion troubled the *Cates* court, the court expressed approval of both the family purpose exception and the duty-to-the-general-public exception.[176] The court added that these exceptions take into account that tort litigation does not always disrupt family harmony.[177]

Accordingly, the *Cates* court based its new standard on the rationale but not the exact language of *Schenk*.[178] It explained that a court should not focus on the factual "purpose" or "objective" for driving a car.[179] Instead, the *Cates* court instructed, courts should inquire

171. *Id.* at 722-26; *see supra* notes 61-97 and accompanying text.

172. *Cates*, 619 N.E.2d at 723-25. See *supra* notes 70-76, 94 and accompanying text for a discussion of the family purpose exception.

173. *Id.* at 725.

174. *Id.* The *Cates* court explained, "Unfortunately, many Illinois appellate decisions after *Schenk* looked to its expansive 'family purpose' language and not to the underlying rationale." *Id.* See *supra* notes 70-77 and accompanying text for a discussion of the facts and holding in *Schenk*.

175. *Cates*, 619 N.E.2d at 725. The court discussed cases where children were not allowed to sue their parents for negligence because the families were driving to the child's prospective college, Eisele v. Tenuta, 404 N.E.2d 349 (Ill. App. Ct. 1980), or to the child's piano lessons, Hogan v. Hogan, 435 N.E.2d 770 (Ill. App. Ct. 1982).

176. *Cates*, 619 N.E.2d at 726 ("We have considered the reasoning of *Schenk* as well as *Cummings* and approve of those exceptions.").

177. *Id.* This is especially relevant in the *Cates* case in light of the fact that Heather Cates argued that protecting family harmony in her case was futile because her parents were already divorced. *Id.* at 720. The *Cates* court seemed to agree, stating:

> In truth, the traditional policy of family harmony is no longer viable, as *Schenk* recognized. The focus has shifted to a concern with preventing litigation concerning conduct intimately associated with the parent-child relationship. The exceptions consistently demonstrate that where the family relationship is dissolved or where that relationship has ceased to exist with respect to conduct giving rise to the injury, the immunity will not be applied.

Id. at 726.

178. *Id.* at 728-29.

179. *Cates*, 619 N.E.2d at 728 ("We wish to clarify the *Schenk* exception so that the

whether the alleged conduct uniquely relates to the parent-child relationship.[180] According to the court, the appropriate inquiry in *Cates* would be "whether the alleged conduct concerns parental discretion in discipline, supervision, and care of the child."[181] If so, a court should not involve itself in the family's situation, and should thus apply the immunity doctrine.[182]

The court noted a similarity between its new standard and the standard used in Wisconsin.[183] The *Cates* court explained that its new standard approximates the Wisconsin standard "without its enumerated duties."[184] Thus, the *Cates* court announced, in Illinois a court should recognize parental immunity only for suits that arise out of conduct uniquely inherent to the parent-child relationship. Despite this holding, the court declined to lay out the precise boundaries of this conduct.[185]

Applying this standard to the facts of *Cates*, the court concluded that the negligent operation of an automobile is not inherent to the parent-child relationship.[186] The court reasoned that such conduct does not represent the decision-making process or discretion of a parent in disciplining, supervising, or caring for his or her child.[187] Even though Timothy had driven the car while exercising his visitation rights as a parent, the court determined that his duties as a driver did not inherently relate to the parent-child relationship.[188] Instead, the court held Timothy Cates owed a duty to his daughter as a member of the general public.[189] Therefore, the court affirmed the appellate court's ruling allowing Heather's negligence action against her father.[190]

C. Chief Justice Miller's Dissenting Opinion

Calling for legislative action, Chief Justice Miller was the lone

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'purpose' and 'objective' are not paramount.").

180. *Id.* at 729.

181. *Id.*

182. *Id.*

183. *Id.* The Wisconsin approach to parent-child immunity is set forth in Goller v. White, 122 N.W.2d 193, 198 (Wis. 1963), discussed *supra* notes 100-110 and accompanying text.

184. *Cates*, 619 N.E.2d at 729.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Cates*, 619 N.E.2d at 729.

190. *Id.* at 730.

dissenter in *Cates v. Cates*.[191] The Chief Justice agreed with the majority that Illinois had previously adopted the doctrine of parent-child tort immunity.[192] Furthermore, since the doctrine was judicially created, Chief Justice Miller did not doubt the supreme court's power to modify or eliminate it.[193]

Nevertheless, Chief Justice Miller's dissent questioned the court's wisdom in modifying the doctrine.[194] According to the Chief Justice, deciding the proper scope of immunity afforded to parents is fundamentally a question of public policy.[195] Therefore, Chief Justice Miller believed that legislative action could better resolve the issues before the court.[196]

Chief Justice Miller also expressed concern with the potential effects of the court's decision in *Cates*.[197] He predicted that any change in the area of parental immunity would implicate a variety of important interests.[198] For instance, he observed that the court's decision would primarily affect the traditional authority of parents over their minor children.[199] He urged, however, that modifying the doctrine could also affect other parties such as insurance providers[200] and teachers standing in *loco parentis*.[201]

Thus, although he conceded the court's power to modify the doctrine, Chief Justice Miller questioned the prudence of the court's decision.[202] In sum, he concluded that the legislative process could

191. 619 N.E.2d at 730-32 (Miller, C.J., dissenting).

192. *Id.* at 731 (Miller, C.J., dissenting) ("As the majority explains, although this court has not specifically held that the rule of immunity governs negligence actions between parent and child, the court has consistently approved that doctrine through judicial dicta." (citing Gerrity v. Beatty, 373 N.E.2d 1323 (Ill. 1978); Mroczynski v. McGrath, 216 N.E.2d 137 (Ill. 1966); Nudd v. Matsoukas, 131 N.E.2d 525 (Ill. 1956))).

193. *Cates*, 619 N.E.2d at 731 (Miller, C.J., dissenting).

194. *Id.* (Miller, C.J., dissenting) ("Prudence, and not power, should guide our action here.").

195. *Id.* at 731-32 (Miller, C.J., dissenting).

196. *Id.* at 731 (Miller, C.J., dissenting).

197. *Id.* (Miller, C.J., dissenting).

198. *Cates*, 619 N.E.2d at 731 (Miller, C.J., dissenting).

199. *Id.* (Miller, C.J., dissenting).

200. Chief Justice Miller predicted that a modification of the doctrine would "substantially affect existing underwriting standards and measurements of risk." *Id.* (Miller, C.J., dissenting).

201. The Chief Justice expressed concern that modifying Illinois' parental immunity doctrine might necessitate changing the statutory provisions that extend immunity to Illinois teachers. *Id.* (Miller, C.J., dissenting) (referring to ILL. COMP. STAT. ch. 105, § 5/24-24, 5/34-84(a) (West 1992) (formerly ILL. REV. STAT. ch. 122, ¶¶ 24-24, 34-84(a) (1991))).

202. *Id.* at 732 (Miller, C.J., dissenting) ("I do not doubt our power to modify the immunity doctrine, but I must question the wisdom of our doing so.").

better anticipate and resolve the variety of issues arising under Illinois' parent-child immunity doctrine.[203]

IV. ANALYSIS

The *Cates* majority recognized that Illinois affords parental immunity as a general rule, but also acknowledged several exceptions to the doctrine.[204] Nevertheless, the court then developed a standard similar to that used by Wisconsin, a state that has almost completely abrogated the doctrine of absolute immunity.[205] Apparently, the *Cates* court sought some type of balance between these two approaches. This Part explains how, in *Cates*, the supreme court reached a problematic compromise between past Illinois decisions and Wisconsin's current approach.

A. *The* Cates *Standard: An Attempted Compromise*

Initially, the *Cates* court seemed compelled to retain parent-child tort immunity as part of Illinois law.[206] To the court, each exception to parental immunity served as another confirmation that the doctrine still remained the general rule in Illinois.[207]

Nevertheless, the status quo also concerned the *Cates* court. The court complained about the uncertainty generated by Illinois' growing number of exceptions to parental immunity.[208] Indeed, the court acknowledged that Illinois' current approach often leads to inconsistent and arbitrary rulings.[209] Thus, while remaining loyal to precedent,[210]

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203. *Cates*, 619 N.E.2d at 732 (Miller, C.J., dissenting).

204. *Id.* at 722. The court explained, "Illinois stands in that group of jurisdictions, a minority, which have partially abrogated the doctrine by carving out exceptions to it." *Id.*

205. *Id.* at 729. The Wisconsin Supreme Court refused to afford immunity "except (1) where the alleged negligent act involves an exercise of parental authority over the child; and (2) where the alleged negligent act involves an exercise of ordinary parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care." Goller v. White, 122 N.W.2d 193, 198 (Wis. 1963); *see supra* notes 100-110 and accompanying text.

The *Cates* court acknowledged the similarity between its new standard and the *Goller* standard. *Cates*, 619 N.E.2d at 729. The court explained, "The standard we have thus developed focuses primarily on conduct inherent to the parent-child relationship, which conduct we describe by approximating the *Goller* standard without its enumerated duties." *Id.* (citing *Goller*, 122 N.W.2d at 198).

206. *See Cates*, 619 N.E.2d at 719-20.

207. *Id.* at 723-25.

208. *Id.* at 722-23.

209. *Id.* at 722-23. The court stated: "The approach taken by Illinois . . . is considered problematic, as the law which develops is often inconsistent and arbitrary." *Id.* The *Cates* court acknowledged the criticism of the dissenting justice in Cummings v.

the *Cates* court also hoped to establish a more predictable standard to apply in parent-child tort litigation.[211]

In essence, the *Cates* court attempted to achieve a compromise. While expanding on two previously recognized exceptions to parental immunity,[212] the court developed a rule mirroring Wisconsin's more clear and predictable standard.[213] The court ultimately held that Illinois courts would grant parental immunity where a plaintiff's allegations arise out of conduct uniquely inherent to the parent-child relationship.[214]

B. Fundamental Problems with the Cates *Compromise*

At first glance, it may appear that the *Cates* court struck a sound compromise. A closer examination, however, reveals that *Cates* may not have given Illinois the best of both worlds. In fact, the supreme court's attempted compromise may create as many problems as it solves.

These problems originate in the conflicting philosophies underlying the treatment of parental immunity in Illinois and Wisconsin. As a general rule, Wisconsin does not recognize the absolute parent-child immunity doctrine.[215] Indeed, the *Goller* standard encompasses Wisconsin's only two exceptions to this general rule.[216] In contrast, Illinois does recognize parental immunity as a general rule.[217]

Jackson, 372 N.E.2d 1127 (Ill. App. Ct. 1978) (Webber, J., dissenting). In his dissent, Justice Webber stated: "Either the doctrine of parental immunity should be abolished altogether or left standing intact. The piecemeal approach . . . can lead to nothing but confusion." *Cates*, 619 N.E.2d at 723.

210. *Cates*, 619 N.E.2d at 720 ("[W]hile this court has not rendered a decision holding that the parent-child tort immunity doctrines [sic] bars negligence actions, its recognition of the doctrine in this area of the common law and subsequent confirmations of that recognition have precedential effect.").

211. *Id.* at 728-29.

212. The exceptions that the supreme court expanded were the family purpose exception and the duty-to-the-general-public exception. The *Schenk* court had carved out the family purpose exception for conduct falling outside the family relationship. *Schenk*, 241 N.E.2d 12, 15 (Ill. App. Ct. 1968). Relying on *Schenk*, the court in *Cummings* held that it would not afford immunity if the duty breached was one owed to the general public and not specifically to the child. *Cummings*, 372 N.E.2d at 1128. The supreme court expressed its approval of both of these exceptions. *Cates*, 619 N.E.2d at 726.

213. *Cates*, 619 N.E.2d at 728-29. Without actually calling its standard a compromise, the supreme court stated, "[W]e wish to clarify the *Schenk* exception . . . . We also wish to tailor the exception to conform to standards utilized by jurisdictions which have limited parent-child negligence actions to a more discernible area." *Id.* at 728.

214. *Id.* at 729.

215. *Goller*, 122 N.W.2d at 198; *see also* Grobart, *supra* note 1, at 320-21.

216. *Goller*, 122 N.W.2d at 198.

217. *See Cates*, 619 N.E.2d at 729.

Furthermore, before *Cates*, Illinois courts had previously formulated several exceptions to this general rule.[218] In sum, Wisconsin and Illinois base their standards on very different philosophies: while Wisconsin grants immunity as an exception, Illinois grants immunity as the general rule.[219]

Due to this distinction, the supreme court's apparent compromise between prior Illinois decisions and the *Goller* standard will foster considerable confusion. The *Cates* decision leaves unclear exactly how Illinois' new standard relates to Illinois' previously recognized exceptions. Should Illinois courts apply the *Cates* standard in every parent-child tort action, or just automobile negligence cases? Should the *Cates* standard ever come into play in contribution actions or in cases where death has dissolved the family relationship? Should courts consider the *Cates* standard only in cases that would potentially involve either the family purpose exception or the duty-to-the-general-public exception? Questions such as these, which were left unanswered by the *Cates* decision, will be addressed in Part V of this Note.

C. *Full Abrogation: The Missing Step in the* Cates *Compromise*

The *Cates* court could have avoided causing confusion by simply taking its compromise one step further. The court should have adopted both the *Goller* standard and its underlying philosophy. In other words, the court should have fully abrogated the doctrine of parental immunity, except in situations where the alleged wrongful conduct involves an exercise of parental authority or discretion. Or, to mirror the language of the *Cates* majority, the court could have directed that parental immunity be denied as a rule, except when the alleged wrongful conduct inherently relates to the parent-child relationship.

Abrogation of parental immunity would certainly create less confusion than the majority's attempt to retain the doctrine. This approach also seems more practical than the dissent's call for legislation on the

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218. *Id.* at 722-26; *see supra* notes 61-97 and accompanying text.

219. The *Cates* court provided only a vague explanation of the differences it saw between Wisconsin's approach and the one it adopted in *Cates*. The court first noted that unlike the *Goller* standard, the *Cates* standard does not enumerate the parental duties that enjoy immunity. *Cates*, 619 N.E.2d at 729. The court then stated, "The standard we have created is not . . . as extreme because we do not fully abrogate the immunity, but rely on an exception." *Id.*

Unfortunately, it remains unclear to which exception the *Cates* court was referring when stating that Illinois' approach relies on an "exception." This "exception" could be the actual *Cates* standard or one of Illinois' previously recognized exceptions. *See infra* notes 231-50 and accompanying text.

issue.[220] After all, it was the courts, and not the legislature, that adopted parental immunity.[221] Likewise, courts, not the General Assembly, created the numerous exceptions to this doctrine.[222] The legislature's lack of involvement[223] indicates that it has no interest in designing a statutory framework to address the numerous issues raised by parent-child tort litigation.

Consequently, the responsibility for shaping the doctrine of parental immunity properly lies with the judiciary. The *Cates* court rightly took on this responsibility. Yet, the court stopped short of fully abandoning parental immunity. Thus, with the status of several exceptions to the doctrine unclear, the supreme court's attempted compromise leaves Illinois law on parental immunity open to several interpretations.[224]

V. IMPACT

The *Cates* decision leaves several questions unresolved about when and how parent-child immunity should be applied. The supreme court made it clear that parent-child tort immunity remains the general rule in Illinois.[225] The *Cates* court also indicated that when facing the question of whether to apply immunity, courts should ask whether the allegedly negligent conduct uniquely relates to the parent-child relationship.[226] Yet, the court failed to clarify whether this standard essentially replaces, in whole or in part, the five previously established exceptions to parent-child tort immunity.[227]

As a result, the *Cates* decision supports at least three conflicting interpretations. First, the *Cates* standard arguably replaces all five of the previously recognized exceptions to parent-child tort immunity in

220. *Cates*, 619 N.E.2d at 730-731 (Miller, C.J., dissenting). In his dissent, Chief Justice Miller stated, "I believe that abrogation of the immunity doctrine, whether in whole or in part, should be accomplished through legislative action, and not by judicial fiat." *Id.* at 731; *see supra* notes 191-203 and accompanying text.

221. *See* Foley v. Foley, 61 Ill. App. 577, 580 (1895); *Cates*, 619 N.E.2d at 718.

222. *See supra* notes 61-97 and accompanying text.

223. The only legislation potentially implicating the parental immunity doctrine provides immunity to Illinois teachers. ILL. COMP. STAT. ch. 105, §§ 5/24-24, 5/34-84(a) (West 1992) (formerly ILL. REV. STAT. ch. 122, ¶¶ 24-24, 34-84(a) (1991)). These provisions basically codify the holdings of the supreme court in Kobylanski v. Chicago Bd. of Educ., 347 N.E.2d 705 (Ill. 1976) and in Thomas v. Bd. of Educ., 395 N.E.2d 538 (Ill. 1979).

224. *See infra* notes 225-50 and accompanying text.

225. *Cates*, 619 N.E.2d at 729.

226. *Id.*

227. *See infra* notes 231-50 and accompanying text.

Illinois.[228] Second, the *Cates* standard may merely combine the family purpose and the duty-to-the-general-public exceptions.[229] In effect, then, the standard would not apply in cases invoking the other three exceptions to parental immunity. A third possible reading of *Cates* limits its precedential effect only to cases arising from similar facts. Thus, *Cates* might merely constitute a sixth exception, one that eliminates parental immunity in actions involving automobile accidents.[230] These three interpretations are discussed in turn below.

A. Replacing All Five Exceptions to Parent-Child Tort Immunity

Perhaps the supreme court has replaced the five previously recognized exceptions to parental immunity with a new standard. This would cause Illinois courts to treat the *Cates* standard as the only exception to parental immunity and to abandon the previously recognized exceptions.

For example, in a case where a child sued the estate of a dead parent, before *Cates*, the child would have relied on the exception to parental immunity for dissolved family relationships developed in *Johnson v. Myers*.[231] The child would claim that the parent's death dissolved any relationship protected by immunity.[232] However, the *Cates* standard might lead to a different result. Applying *Cates*, a court might inquire whether the alleged conduct inherently related to the parent-child relationship.[233] If it did, the estate could establish immunity by arguing that while living, the defendant parent had a right under *Cates* to exercise parental authority and discretion.

Similar twists may arise in cases invoking the *Nudd* exception,[234] the oldest exception to parent-child immunity, under which the plaintiff alleges willful and wanton conduct.[235] Under *Nudd*, a child plaintiff could successfully sue a physically abusive parent for assault or battery. Now, under *Cates*, the parent might respond that the alleged conduct inherently related to parental authority and discretion. The

228. *See infra* notes 231-35 and accompanying text.

229. *See infra* notes 236-44 and accompanying text.

230. *See infra* notes 245-50 and accompanying text. This was the solution originally reached by the appellate court in Cates v. Cates, 588 N.E.2d 330, 335 (Ill. App. Ct. 1992).

231. 277 N.E.2d 778 (Ill. App. Ct. 1972); see *supra* notes 83-86 and accompanying text for a discussion of this exception as embodied in *Johnson*.

232. *See, e.g., Johnson*, 277 N.E.2d at 779.

233. *See Cates*, 619 N.E.2d at 729.

234. See *supra* notes 62-69 and accompanying text for a discussion of this exception.

235. Nudd v. Matsoukas, 131 N.E.2d 525, 531 (Ill. 1956).

parent would essentially try to convince the court that the new *Cates* standard applies in all tort actions between parents and children.

In sum, if Illinois courts interpret *Cates* as replacing all of the previously recognized exceptions to parent-child tort immunity, they will probably never again apply the five previously established exceptions.

B. A Combination of Two Previously Recognized Exceptions

Another plausible interpretation of *Cates* is that its new standard is a clarification of two previously recognized exceptions. The *Cates* standard could be seen as merely clarifying confusion over the family purpose and the duty-to-the-general-public exceptions in Illinois.[236] Accordingly, the *Cates* standard would have no effect on the other three exceptions to parental immunity.

There is no doubt that the *Cates* court approved of the family purpose exception.[237] Still, as the court acknowledged, the exception has caused some confusion, especially in automobile negligence cases.[238] For instance, while some courts have held that the particular act of driving falls outside the family purpose, other courts have focused on whether the reasons for driving, such as transportation to piano lessons, amounted to a family use.[239]

Despite this divergence, the *Cates* court agreed with the philosophy underlying both the family purpose and the duty-to-the-general-public exceptions.[240] Like the courts that formulated these exceptions, the *Cates* court explained that the mere existence of a family relationship does not absolve parents of their duties to the general public.[241] Instead, parents owe such duties to their own children as well as to the general public.[242]

The *Cates* court based its new standard on this rationale.[243] Thus, cases that may have supported application of the family purpose or duty-to-the-general-public exceptions in the past would now support application of the *Cates* standard. Instead of asking whether the alleged wrongful conduct fell outside the family purpose or implicated

236. *Cates*, 619 N.E.2d at 728. Support for this interpretation lies in the court's assertion that it has "considered the reasoning of [the family purpose exception in] *Schenk* as well as [the general public exception in] *Cummings* and approve[s] of those exceptions." *Id.* at 726.

237. *Id.* at 728.

238. *Id.* at 723-26.

239. *Id.* at 725; *see supra* notes 173-75 and accompanying text.

240. *Cates*, 619 N.E.2d at 726.

241. *Id.*

242. *Id.*

243. *Id.* at 728.

a duty owed to the general public, courts would now inquire whether the conduct inherently related to the parent-child relationship.[244]

It remains unresolved whether the *Cates* standard applies only in situations that would have allowed application of these two exceptions. If this is the case, Illinois would now recognize four exceptions to parental immunity: the willful and wanton conduct exception, the death of a party exception, the contribution exception, and, now, the *Cates* parent-child relationship exception. This interpretation is possible because the supreme court failed to address how its new standard affects the other three exceptions to parental immunity. Thus, while some courts may treat the *Cates* standard as a replacement for all of Illinois' previously recognized exceptions, other courts may interpret the *Cates* standard as only a modified combination of the family purpose and duty-to-the-general-public exceptions.

C. Merely an Automobile Accident Exception?

The appellate court in *Cates* expressly recognized a sixth exception to parent-child immunity in cases involving automobile accidents.[245] Although it affirmed the appellate court's decision, the supreme court refrained from expressly adopting this sixth exception.[246] Nevertheless, the lack of clarity present in the *Cates* decision may ultimately limit its reach to automobile negligence cases alone.

First, the supreme court's characterization of the issues before it created ambiguity over whether the court formulated a new standard or merely recognized a sixth exception. The court inquired whether the parent-child tort immunity doctrine bars a minor plaintiff's action alleging the negligent operation of an automobile.[247] By framing this inquiry so narrowly, the court suggested that *Cates* would apply only in cases involving automobile accidents.[248]

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244. *Id.* at 729.

245. Cates v. Cates, 588 N.E.2d 330, 335 (Ill. App. Ct. 1992).

246. *Cates*, 619 N.E.2d at 729. Instead, the court applied its new general standard to the specific facts of *Cates* and concluded that "the negligent operation of an automobile is not conduct inherent to the parent-child relationship." *Id.*

247. *Id.*

248. The court's brief statement of procedural history is also potentially deceptive:

> [T]he appellate court declined to fashion a rule abolishing the doctrine as concerning the general area of negligence and decided to partially abrogate in cases of automobile negligence. In doing so, the court stated that it was mindful of a number of factors, including that automobile insurance is mandatory in Illinois. The appellate court thus reversed and remanded. We granted defendant's petition for leave to appeal. We now affirm the appellate court.

Id. at 716 (citations omitted).

Like the supreme court's statement of the issues in *Cates*, this account of the case's

Consequently, courts may disagree on whether the *Cates* standard should be applied in all parent-child tort litigation.[249] This uncertainty over how and when to apply Illinois' new standard may ultimately lead courts to avoid the *Cates* decision. One way to do so would be to distinguish *Cates* on the facts in cases not arising from automobile accidents.

This third possible interpretation of *Cates* would be an undesirable one. Although the supreme court set out to modify and improve Illinois' approach to parental immunity,[250] courts interpreting *Cates* may unfortunately see only one narrow message: Parental immunity is not available as a defense in parent-child litigation arising from automobile accidents.

VI. CONCLUSION

The doctrine of parent-child tort immunity has evolved considerably since Mississippi first implemented it in 1891.[251] In *Cates v. Cates*, Illinois reevaluated its position on parent-child tort immunity.[252] Striking a compromise between past Illinois decisions and Wisconsin's approach, the supreme court ruled that Illinois will afford immunity for conduct inherent to the parent-child relationship.[253] Yet the *Cates* court failed to address the precise effect this standard will have on Illinois' previously recognized exceptions to parental immunity. As a result, Illinois law on parent-child tort immunity stands open to several conflicting interpretations.[254] Until the supreme court revisits this issue, confusion among lower courts will persist in tort litigation between parents and children.

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procedural history also implies that the court is concerned only with automobile accidents. While it states that it reached the same conclusion as the appellate court, the supreme court carelessly refrains from mentioning that it used an entirely different reasoning process to reach this conclusion.

249. *See supra* notes 231-50 and accompanying text.

250. *See Cates*, 619 N.E.2d at 728.

251. *See supra* notes 22-136 and accompanying text.

252. *Cates*, 619 N.E.2d at 722-25; *see supra* notes 154-203 and accompanying text.

253. *Cates*, 619 N.E.2d at 729.

254. *See supra* notes 231-50 and accompanying text.